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In the Supreme Court of the United States

OCTOBER TERM, 1966.

Case No. 925.

ARTHUR FORD,
Appellee,

vs.

ROGER HAENDIGES, *et al.*,
Appellant,

ON APPEAL FROM
THE SUPREME COURT OF THE STATE OF OHIO.

MOTION TO DISMISS APPEAL.

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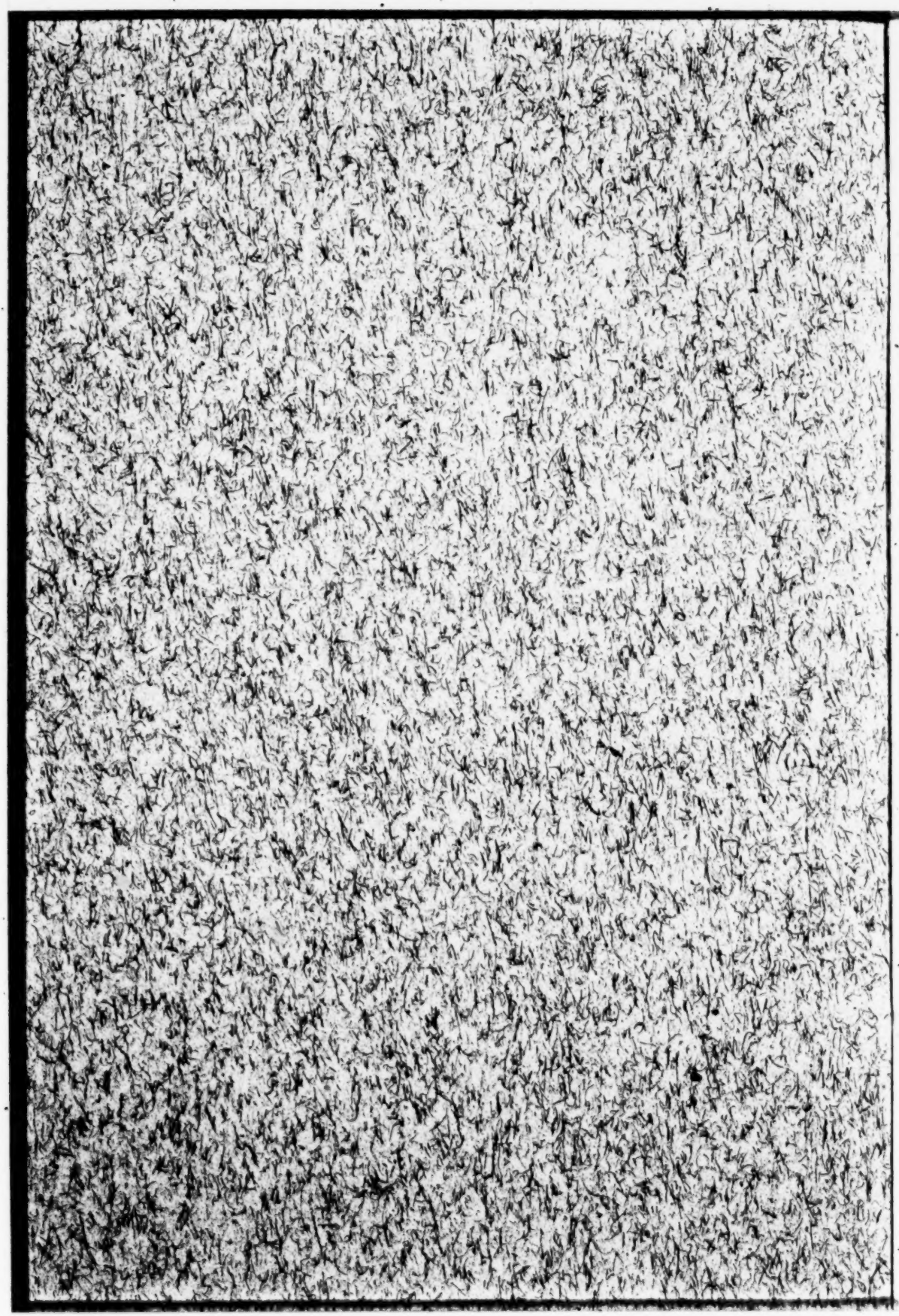

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MOTION TO DISMISS APPEAL.

Appellee, Arthur Ford, moves this Court for its order dismissing the appeal of Roger Haendiges, Appellant, on an appeal from the Ohio Supreme Court in a civil case on the following bases:

1. That the appeal does not present a substantial federal question.
2. That the federal question sought to be reviewed by Appellant was not expressly passed on by the Ohio Supreme Court.
3. That the judgment of the Ohio Supreme Court rests on an adequate non-federal basis.

OPINION BELOW.

The Opinion of the Supreme Court of the State of Ohio is reported in 7 O. S. 2d 13. A copy of the opinion and judgment is not attached hereto to avoid duplication and may be found in Appendix A of Appellant's Jurisdictional Statement filed in the within case starting on page 15 and ending at page 22 of said Jurisdictional Statement.

BRIEF IN SUPPORT OF MOTION TO DISMISS.

Appellee will divide his Brief on his Motion to Dismiss into two (2) portions and will deal with the questions in their inverse order of appearance above. The first portion of the Brief will combine Nos. 2 and 3 above, namely: that the federal question sought to be reviewed was not expressly passed upon by the Ohio Supreme Court and, that the judgment of the Ohio Supreme Court rests on an adequate non-federal basis. The second portion of this Brief will deal with the issue that the appeal does not present a substantial federal question.

COMBINED ISSUES 2 AND 3.

The question was not passed on and Judgment rests on adequate Non Federal Basis. Appellant, Roger Haendiges, has filed his Jurisdictional Statement with this Court seeking to appeal from a judgment of the Ohio Supreme Court rendered on June 27, 1966.

The Syllabus of the Ohio Supreme Court in the within case as reported in 7 O. S. 2d 13, is set forth as follows:

> "Where an authenticated Bill of Exceptions in a Trial Court is necessary to exemplify the facts which determine the issues presented there, its absence requires a reviewing Court on appeal to dismiss the appeal or reaffirm the judgment of the Court from which the appeal was taken."

The subject matter reviewed by the Ohio Supreme Court was the necessity of a Bill of Exceptions to illustrate the claim of error to a reviewing court. It is apparent that the question of jurisdiction of the person which Appellant attempts to raise in this Court was not expressly passed upon by the majority of the Ohio Supreme Court. It is further apparent that the judgment of the Ohio Supreme Court rests on an adequate non-federal basis, namely, that a Bill of Exceptions from a Trial Court is necessary to illustrate the claims of error to a Court of Appeals.

This Court's attention is respectfully invited again to the entire opinion of the Ohio Supreme Court in the within case which is set forth in the Appendix to Appellant's Jurisdictional Statement on pages 15 through 22. The majority opinion is limited to the issue on the absence of a Bill of Exceptions.

No federal or constitutional question is involved in an Appellate Court requiring a Bill of Exceptions to illustrate a claim of error in the Trial Court.

Further, there is no question that a Bill of Exceptions has been denied to Appellant. At the hearing in the Trial Court, a Court Reporter was available at the request of either party and could have been present at the hearing within two (2) minutes of such a request being uttered. Appellant at no time asked for a Court Reporter.

Thereafter, following this hearing, Appellant could have requested a narrative Bill of Exceptions by simply requesting the Trial Judge to prepare same. Appellant could even have prepared a narrative Bill of Exceptions himself and presented same to the Judge for approval.

Spotswood vs. Industrial Commission, 17 O. L. Abs. 196 (App.) (1934) Headnote No. 1:

> "There is no prescribed form of presenting Bills of Exceptions, nor is the attendance of a court reporter required in order that a record may be made up for review; the narrative form is still permitted."

Over two (2) years has elapsed since the original decision of the Trial Court on December 18, 1964, and to the present date Appellant has neither requested nor submitted a narrative Bill of Exceptions. The obvious reason for this glaring absence is the fact that a narrative Bill of Exceptions would, in fact, clearly destroy a number of Appellant's claims.

This Court's attention is respectfully invited to the first sentence of the majority opinion by the Ohio Supreme Court in this case written by Judge Zimmerman and found at page 19 of Appellant's Jurisdictional Statement which is set forth hereafter:

> "There was no Bill of Exception before the Court of Appeals, and the *judgment entry of the Court of Common Pleas indicates that there was evidence introduced in and considered by that Court.*" (Appellee's emphasis.)

Unfortunately, the original Journal Entry of the Trial Court is not set forth in Appellant's Jurisdictional Statement. However, if it was before this Court it would show that counsel for Appellant signed and approved the Journal Entry which set forth the fact that the Trial Court's decision was partially based upon the evidence presented at the hearing. This Journal Entry was approved by counsel for Appellant because the Journal Entry was accurate and represented the facts. The signature and approval of counsel for Appellant is highly inconsistent with his present claim that no evidence was presented to the trial court. It should further appear strange to this Court that none of Appellant counsel's claims are supported in any manner by the trial judge.

Although multiple and prolonged arguments could be presented in an attack on this appeal, Appellee submits that it is sufficient to again reiterate that the lack of a Bill of Exceptions constitutes an adequate non-federal basis for the decision and certainly does not involve the federal question upon which Appellant now seeks review. The lack of a Bill of Exceptions was the basis for the decision by the Ohio Supreme Court and the jurisdictional question which Appellant seeks to raise was not expressly passed on.

Appellee submits that on the above points and authorities his Motion to Dismiss should be granted and jurisdiction should be refused by this United States Supreme Court.

ISSUE 1.

NO SUBSTANTIAL FEDERAL QUESTION.

The present appeal does not present a substantial federal question. Appellant seeks to raise the issues of "full faith and credit" and "deprivation of due process." It is obvious that the "full faith and credit" clause of Article IV Section 1 of the United States Constitution is only involved in the present case on the basis that the original petition in the Ohio Common Pleas Court was on a judgment from the State of Illinois.

Under Article IV, Section 1 of the United States Constitution the Illinois judgment was, in fact, entitled to full faith and credit if it was presented to the Ohio Court in the proper form.

Article IV, Section 1—Constitution of the United States

> "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and no effect thereof."

The first sentence of Article IV, Section 1 requires the Ohio Courts to give full faith and credit to the Illinois judgment, while the second sentence of Article IV, Section 1 permits Congress to prescribe the manner in which such acts, records and proceedings shall be proved.

Congress has acted under the above authority and has created the following Statute to implement the constitutional guarantee.

28 U. S. C. 1738:

> "The acts of the legislature of any State, territory or possession of the United States, or copies thereof,

shall be authenticated by affixing the seal of such State, territory or possession thereto. The *records and judicial proceedings of any Court in any such State,* territory or possession or copies thereof, *shall be proved or admitted in other Courts within the United States,* its territories and possessions *by the attestation of the Clerk and seal of the Court annexed, if a seal exists, together with the certificate of the Judge of the Court that said attestation is in proper form.* Such acts, records and *judicial proceedings, or copies thereof, so authenticated, shall have the same full faith and credit in every Court within the United States and its territories and possessions as they have by law or usage in the Courts of such State,* territory or possession *from which they are taken.*" (Appellee's emphasis.)

The Journal Entry of the Illinois Court was filed in the Court of Common Pleas of Ohio with the attestation of the Clerk and the seal of the Court annexed, along with the certificate of the Judge that the attestation was in proper form. Thus, there was a judgment presented to the Ohio Court of Common Pleas in the exact form prescribed by 28 U. S. C. 1738.

The Courts of Ohio have religiously and exactly followed the plain language of the U. S. Constitution and of the United States Congress on the issue of "full faith and credit," as applied to the present case. Certainly a substantial federal question does not exist in the present case on this issue where the constitutional guarantees have been followed to the specific letter of the law.

DEPRIVATION OF DUE PROCESS.

Appellant seeks to raise an issue of deprivation of due process of law under the 14th amendment to the U. S. Constitution in his appeal to this Court.

Appellee submits that this is not an issue in the present case and, in fact, is only mentioned in the dissenting opinion as one of two grounds for the dissent.

(See the dissenting opinion of the Ohio Supreme Court as set forth at pages 20, 21 and 22 of Appellant's Jurisdictional Statement in the within case.)

Appellee submits that in personam jurisdiction in the present case does not present a substantial federal question.

This Court has previously decided that a non-resident submits himself to the personal jurisdiction of the Courts in which he has committed a tort even though he may have left the territorial jurisdiction of the Court at the time of suit and process. See *Kane vs. New Jersey*, 242 U. S. 160, 61 L. ed. 222, 37 S. Ct. 30; *Hess vs. Pawlowski*, 274 U. S. 352, 71 L. ed. 1081, 47 S. Ct. 632; and *Young vs. Masci*, 289 U. S. 253, 77 L. ed. 1158, 53 S. Ct. 599.

This Court has clearly and unequivocally stated its position as to what due process of law requires of a Court before it can exercise in personam jurisdiction.

International Shoe Co. vs. Washington, 326 U. S. 310, 90 L. ed. 95, 66 S. Ct. 154, 161 A. L. R. 1057 at 1061:

> "Historically the jurisdiction of Courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of a Court was prerequisite to its rendition of a judgment personally binding him. Pennoyer vs. Neff, 95 U. S. 714, 733, 24 L. ed. 565, 572. But now that the capias ad respondendum has given way to personal service of

summons or other form of notice, due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice * * *." (Multiple citations omitted.)

Applying this Court's standard to the present case it is apparent that Appellant did, in fact, have "excessive contacts" with the Illinois Courts. Appellant made direct use of the laws and the Courts of the State of Illinois by physically traveling to the State of Illinois; by seeking out the legal officers of the State of Illinois; by swearing out a false affidavit in the Illinois Prosecutor's office for the arrest of Appellee; by having Appellee arrested by the officers of the State of Illinois; by requiring Appellee to be jailed in an Illinois jail; by requiring an Illinois bond to be posted in the Illinois Court. Appellant made full and extensive use of the laws and Courts of the State of Illinois, and now seeks to avoid the results of his acts by claiming that the laws of the State of Illinois deprive him of due process.

The Illinois statutes fully comply with the standard of "notice" set up by this Court in *International Shoe Company vs. Washington* (*supra*), by requiring personal service of summons upon the non-resident defendant. (See Section 17 of the Illinois Civil Practice Act set forth in its entirety at pages 28 and 29 of Appellant's Jurisdictional Statement.)

The Illinois legislature has gone far beyond the non-resident motor vehicle statutes mentioned in the cases above which only require notice being forwarded to the last known address of the defendant. Instead, the *Illinois*

legislature insures notice to the non-resident by requiring personal service upon him. No superior notice can be provided.

Finally, notwithstanding counsel for Appellant's claims to the contrary, actual personal service was made upon Appellant in Cleveland, Ohio in the original Illinois suit on July 11, 1963. This service of process was before the Ohio Trial Court and could have been contradicted by the sworn affidavit of Appellant. However, there has never been such an affidavit forthcoming from the Appellant. Apparently, Appellant seeks to make this claim through his counsel rather than by submitting his affidavit to the Courts so as to subject himself to the laws of perjury.

Appellee respectfully submits that it is clear from the above points and authorities that there is no substantial federal question involved in the within appeal. It is submitted that the letter of the law has been followed closely and exactly in the within case and there remains no issue whatsoever to be decided by this Court.

CONCLUSION.

The present appeal involves the lack of a Bill of Exceptions in a reviewing Court. The Ohio Supreme Court has again categorically stated that a reviewing Court may not reverse a Trial Court on a matter of evidence where there is no Bill of Exceptions to illustrate the claimed error of evidence.

The within case rests on an adequate non-federal basis. The federal question which Appellant seeks to raise on review in this Court was not expressly passed upon by the majority of the Ohio Supreme Court. This appeal does not present a substantial federal question. This U. S.

Supreme Court has clearly set the standards for the exercise of personal jurisdiction which standard has been followed by each and every one of the Courts in the within case.

Finally, let it be known that Counsel for Appellee "grows weary of the chase." The original judgment was rendered on September 7th of 1963 and in January of 1967 Appellee still awaits the satisfaction of this judgment. After each step in the Appellate process, Appellant creates a new specter which is met and overcome. This litigation should, in fact, terminate and should be terminated by this United States Supreme Court now. Otherwise, it will be Appellee who is being deprived of due process of law.

On all of the above points and authorities Appellee respectfully submits that his Motion to Dismiss should be granted.

Respectfully submitted,

LAWRENCE E. STEWART,
Counsel for Appellee.

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STEWART & DECHANT,
Attorneys for Appellee.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

HAENDIGES *v.* FORD.

APPEAL FROM THE SUPREME COURT OF OHIO.

No. 925. Decided March 13, 1967.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed, it appearing that the judgment below rests upon an adequate state ground.